RDis File No. 236

19 39.

Collection No (2.)

Mysore Residency

PW

21/7/67

Pros. Serial Nos. 1 — 2

K

Subject.

Action under S. 83 A of the Bangalore Municipal Laws

(Building of Sri Ramalingam Chetty Temple at 4, Duffy Road

Previous References.

Later References.

(Blue).

S&P—(M-2104)—21-3-39—70,000

Dy.No.10,153 S.N.1.

(1) This is an appeal petition against the notice dated the 14th August 1939 issued by the District Magistrate under section 83(A) of the Bangalore Municipal Law, refusing to allow the appellant to retain the building at Premises No.4, Infantry Road and four cottages constructed on Cunningham Cross Road unless he complied with certain conditions. The appellant also prays that an interim stay order be issued to the District Magistrate not to demolish the cottages.

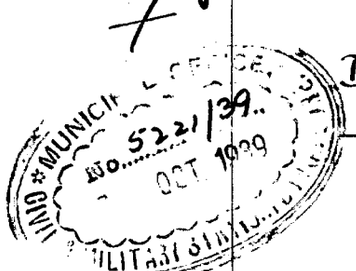
(2) The appeal petition may be sent to the District Magistrate u/o for favour of remarks. He may be requested to send all the relevant records connected with the case and also not ~~the~~ to demolish the cottages till final orders are passed by the Resident in the appeal.

4.X.39.

A.S.Rao
4.X.39

5/10/39. (from para 1)

Secretary.



District Magistrate & Assistant to the Resident

u/o. No. D. 10, 153-39/Judl, dated the 5th October 39

3 The records connected with the case are herewith. I have deferred further action pending orders from the Hon'ble the Resident on the subject.

4. The buildings were assessed under the provisions of Section 58 (3) Bangalore Municipal Law soon after they were occupied. The Revenue Department of the Municipality does not enquire if buildings have been erected with or without sanction while assessing them nor does the law require it.

5. Similarly, water and sanitary connections were also sanctioned in the usual course without its being realized that the buildings were unauthorized. The department that deals with applications for water and sanitary connections is different from that which deals with Building applications and it has not been the practice ~~at the time~~ to verify whether a building is authorized or unauthorized before sanction of water and sanitary connections was recommended. I have since issued orders changing this practice.

6. In any case, the fact that a person gets his premises assessed and gets water and sanitary connections behind the back of the District Magistrate, as happened in this case, cannot absolve him from getting regular sanction for the construction of the buildings. In this case there was absolutely no sanction for the buildings: the sanction order for the lay-out was given more than a year before the owner started building. Hence even if he mistakenly thought buildings had been sanctioned, the sanction would have lapsed Even then he has not fulfilled the conditions imposed when the lay-out was sanctioned, and it is only those conditions we are now attempting to enforce. It is not our concern that the factory has been leased and our attention was not drawn to this fact either when sanction for the lay-out was applied for or when the lay-out was sanctioned on conditions among others requiring the removal of this Factory. Instead the owner chose to present us with a fait accompli. The

2 - 35000—1-4-39

Margin for binding not to be written on

Notes—*Continued.*

(Contd.)

The owner should either have come to some arrangement with the lessee or should have deferred building until the lease expired.

The Health Committee has taken a very serious view of this matter and my action is based on its recommendations.

H.H. Carleton

District Magistrate
and Assistant to the Resident.

ET/-26/10.

OFFICE OF THE
H[illegible]E THE RESIDENT
M[illegible]RE, BANGALORE.
26 OCT. 1939
Diary No. 10,947
File No.

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

U/O No. P392/1/39 dated 26th OCTOBER 1939.
with Residency office file No. 236 of 39 & E.E's file No. 762 of 39.

8.

page 9 of (H)

The facts of the case are these: One Mr.Ramalingam of No.2 Lalbagh Road applied on 1st February 1937 for permission to sub-divide his land on No.4 Infantry Road into 4 building sites and to erect 4 buildings according to plans submitted by him. On 5th August 1937 sanction was accorded to the lay-out subject to 4 conditions, namely (1)the road was made 30 feet wide, (2)the factory was removed from the premises, (3)the bridge over the main channel was constructed of the same size as the one on the Tasker Avenue Road and (4)the old dis-used road would not be opened to through traffic. In February 1939 it was found that he was constructing the building, and as the factory which had to be removed according to the conditions imposed was not dismantled, a preliminary notice was served on him. As no reply was received, a special notice under section 83-A(7) was issued on 6th May 1939.

page 15 of (H)

page 17 of (H)

page 18 of (H)

9.

As regards paras 1 to 3 of the appeal petition, it may be stated that there is nothing in section 83-A of the Municipal Law, which relates to sanction to erect buildings and matters connected therewith, laying down that the Commission is precluded from raising the question of the absence of authority to construct or violation of condition if it has supplied water connection, provided drainage and assessed tax. It is perfectly improper, no doubt, that when there is no authority or sanction to construct a build ing, it should be assessed to tax or afforded facilities. But it seems to be clear that there is no legal estoppel on the part of the Commission to declare that the construct ion itself is unauthorised or that certain conditions imposed have been violated and certain consequences contain ed in the Law should therefore follow. As District Magistrate points out in paras 4 to 6, the fact that a person gets his premises assessed and gets water and sanitary connections cannot absolve him from getting regular sanction for the construction of the building.

In any case, we are concerned with Asst. to the Resident under 83 A; not with Commissr.

Paras

10.

Paras 4 to 7 of the appeal petition try to make out that the conditions imposed are at this stage difficult of performance, and hence the petitioner may be permitted not to comply with them. District Magistrate points out that the Health Committee recommended the conditions, and if the question of the adequacy of or necessity for the particular conditions were left to every citizen putting up a structure the provisions of the Law would be reduced to a nullity. Sanction itself had been accorded subject to certain conditions; it was up to the petitioner then to move the Commission to reconsider or alter the conditions. All the conditions, on the other hand, were ignored and the buildings completed. The District Magistrate considers that there is a clear violation, and suitable action allowed by law is called for. The question is whether Resident should interfere on the ground that the proposed action, which the petitioner knowingly brought upon himself, is "highly inequitable".

please see pages 28 + 29 q (H)

11.

Para 8 challenges the validity of the order issued by the District Magistrate and Assistant to the Resident on the ground that sub-section (7) lays down that the Resident may issue the notice, whereas another officer has issued the notice in this case. This point, it appears, has no force. Under section 83-A the application itself for sanction should be made to the Resident, and orders are issued by the Resident. This does not mean that orders must actually issue in the name of the Resident. All statutory functions vested in the Resident are sanctioned by the Resident, but the orders are issued and communicated by the Secretary under direction. It does not appear that a Court of Law will uphold the point that as the law says that the Resident could issue an order, the order is invalid if it issues in the name of the Assistant to the Resident. Under section 114, illustration (e) of the Evidence Act, 1872, a Court

may

may presume that judicial and official acts have been regularly performed.

12. The question for consideration now is the action that is necessary in this case. A notice was issued on 6th May 1939 under sub-section (7) that the structure would be demolished after the expiry of 1 month. Mr.Ramalingam then applied on 5th ~~September~~ July 1939 that the omission may be condoned and the notice withdrawn. The District Magistrate replied on 14th August 1939 that composition of the offences would be considered if the conditions imposed originally were fulfilled within 6 weeks, failing which the structures would be demolished. It may be seen that on a violation of the kind under consideration, one of 3 things can be done under the law: (1) prosecute the person, and get a very heavy fine inflicted under sub-section (6) of section 83-A, each day of the breach of directions calling for an additional fine of Rs.5/-, until all the conditions are complied with, or (2) order demolition of the structures under sub-section (7) or (3) compound the offence under section 177 accepting a sum of money as composition fees. It may be noted that as the first and second courses will mean a large sum of money to the petitioner, a high composition fees may be fixed if the 3rd course is adopted. For sums larger than Rs.25/-, ratification by a resolution of the Municipal Commission would be necessary - vide Notification No.1756 dated the 1st April 1901. Although there is no specific mention in that behalf in the Municipal Law, it may be construed that like all penal laws, the spirit of the law would call for only one of the 3 penalties prescribed in the Law. If a composition fee is accepted, it appears there will be no question of calling upon the petitioner to comply with certain conditions, because the offence of their non-compliance will have been compounded. Or again if the petitioner is called upon to comply with the conditions, and they are actually complied with, there will

page 18 of (H)

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@ page 169 of Bye-laws, (Part IV)

will be no question of compounding the offence, for the non-compliance will have been rectified, and the original non-compliance will have been only a technical offence. In all the circumstances, it appears the appeal for allowing the petitioner to have his way all round cannot be allowed, and substantial composition fees will meet the ends of justice, not to speak of a substantial augmentation of the Municipal revenues. (It may be noted that no statutory appeal lies to the Resident from an order passed by the District Magistrate and Assistant to the Resident. The appellate authority is the Crown Representative).

AsRao
1.x1.39

(from para 3)

Secretary.

~~[illegible]~~

we may refer: "The Resident does not propose to interfere with the order passed by the Asst. to the Resident on his behalf. The petitioner may make an application under Sec 83A(8) of the municipal laws if he so desires."

Resident.

Draft is submitted for approval.

AsRao
2.x1.39

3/11/39

Secretary.

3/12/39

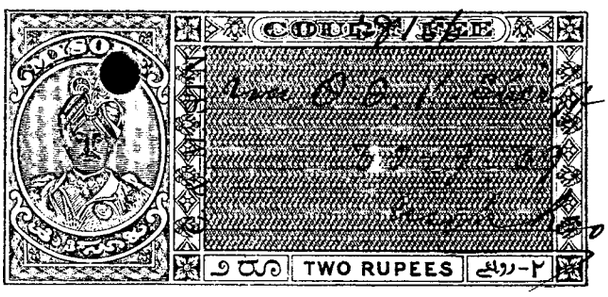
SM (2). Issue

S. N.C.

Secretary

HSRao
30.IX.39

Mr. Chetty



OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
Diary No. 10,153
File No. Poi. 236 (2)/38

BEFORE THE HON'BLE THE RESIDENT IN MYSORE

AT BANGALORE.

Mis. Appeal Petition No. *of 1939.*

V. Ramalingam,
"Vijayam"
Lalbagh Road,
Bangalore. *APPELLANT.*

Memorandum of Appeal.

The appellant abovenamed begs most respectfully to submit this appeal petition against Notice No. P.392/1/39 dated the 14th August 1939 issued by the Learned District Magistrate and Assistant to the Resident, C & M. Station, Bangalore, copy whereof is attached herewith, refusing to allow him to retain the building at Premises No. 4, Infantary Road, and four valuable Cottages constructed on Cunningham Cross Road, C & M.Station, Bangalore, unless he complied with the conditions specified therein and prays that the records relating to the case be called for from the file of the District Magistrate and Assistant to the Resident, C & M.Station, Bangalore, and the matter be graciously reconsidered and the appellant be permitted to retain the structures

P.T.O.

structures [redacted] the following amongst other grounds:-

I. That the Learned District Magistrate failed to take into consideration that the properties have been assessed and 'Kandayam' (House Tax) recovered from the appellant in respect of the same. vs.

2. That during the progress of the construction of the four Cottages, the Municipal Commission supplied water connection and even after completion thereof the Cottages were given permanent water connections. vs The under-ground drainage system was also sanctioned and extended.

3. That if the construction of Cottages was vs. at any stage deemed to be un-authorised, they ought not to have been allowed to be practically completed and assessed. To propose now to demolish will be highly inequitable and will result in heavy loss and irreparable injury to the appellant. The cottages are by themselves not open to any objections and otherwise highly sanitary, modern and costly structures.

4. That as regards the condition that the appellant should demolish the Aerated Water Factory on Premises No. 4, Infantary Road, he respectfully begs to submit that the Lessee constructed it at his own cost after obtaining necessary permission from the Municipal Commission, C & M.Station, Bangalore. Furt... the tenant has under a duly registered Lease Deed the right to enjoy it for about a further

further period of two years.

5. That further the people living near about the said Factory have no objection or complaint to its being located therein on any ground of inconvenience, annoyance or injury to their health. In spite of this fact, the appellant is prepared and ready to demolish it on the expiry of the remaining period of the lease subsisting between him and the lessee. He is further willing to execute an agreement in that behalf.

6. That as regard the direction that the Cross road between the four Cottages be widened to 30 feet, appellant begs to submit that owing to the plan relating to the raising of the four cottages having been returned without any directions being mentioned thereon, the Maistry who was in-charge of the actual constructions of the Cottages committed a bonafide mistake.

7. That even otherwise this road which is laid out is a blind road and is used only by the occupants of the four cottages. It causes no congestion or incomvenience to the general public. If it is insisted that it should be widened by another 10 feet, the appellant will have to demolish the Compound wall situate on the Cunningham Cross Road and in consequence suffer loss and injury.

8. The appellant is advised that the notice dated 26-4-39/6-5-39 by the District Magistrate and Assistant to the Resident in Mysore at

at Bangalore, is invalid by reason of its not being issued by the Hon'ble the Resident in Mysore at Bangalore under Sub Clause 7 of 83 A of the Bangalore Municipal Law.

9. That the appellant has adjusted the culvert and drainage to that of Tasker Road. In spite of his having done so, he is always ready and agreeable to carry out any further directions which may be issued to him in the interest of public health either by the Learned District Magistrate or the Department of Public Health.

10. That even otherwise the appellant respectfully submits that the Learned District Magistrate, has taken an unduly severe view of the case and terms imposed are too severe and in-equitable.

11. Wherefore the appellant most humbly prays that the matter be kindly re-considered and he be allowed to retain the structures or in the alternative the properties be graciously inspected by a personal visit and such final order be passed on his humble appeal petition as the ends of justice may require and pending the disposal of his humble representation, the appellant further prays that an interim stay order be issued to the Learned District Magistrate not to demolish the cottages which are highly costly structures of the value of about Rs30,000/- (Rupees Thirty Thousand only)

No. 2, Lalbagh Road,
Bangalore,
30-9-39.

Advocate for
the Appellant.

True Copy.

OFFICE OF THE DISTRICT MAGISTRATE AND ASSISTANT TO THE RESIDENT, CIVIL AND MILITARY STATION, BANGALORE.

N O T I C E.

No. P. 392/1/39.

Bangalore,
Dated 14th August 1939.

To,
Mr. V. Ramalingam,
'Vijayam'
Lal Bagh Road, Bangalore.

Reference:- Your application dated the 5th July 1939, for permission to retain the unauthorised buildings, erected at Premises No. 4, Infantary Road, and to condone the offence and to withdraw the notice issued to you.

Composition of the offences committed by you against Section 83-A (I) Bangalore Municipal Law (Read with Notification No. 1755 dated 1-4-1901) will be considered on your fulfilling to my satisfaction, the following conditions within 6 weeks from the date of the receipt of this notice, failing which the unauthorised structures will be demolished:-

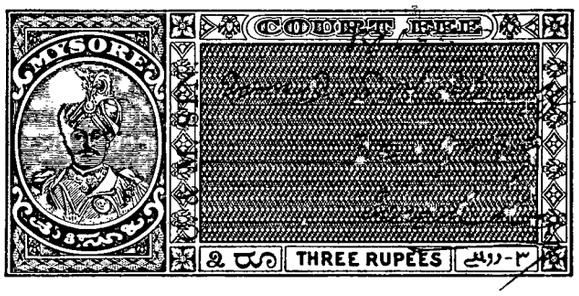
I) that the factory is removed,

2) that the road is widened to 30 feet,

3) that the culvert and drainage is adjusted to that of Tasker Road.

The composition fee which will be demanded may extend to Rs. 2000/-

sd/- H.H. Carleston,
District Magistrate
and
Assistant to the Resident.



Before
~~In the Court of~~ the Hon'ble the Resident in Mysore at Bangalore.

Misc Appeal ~~Suit~~ No. of 1939, ~~193~~.

~~Plaintiff~~/ Appellant. ~~Defendant~~/ Respondent.

~~Petitioner/Complainant~~. ~~Counter Petitioner/Accused~~.

Mr V. Ramalingam
2 Lal Bagh Road
Bangalore

Vs.

I, I, the ~~Appellant~~ ~~Respondent~~ ~~or~~ abovenamed do hereby appoint and retain Mr. D. S. N. SHERIFF, M.A., (Litt.) LL.B., Advocate to appear for me in the above suit / original / miscellaneous petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application for execution of any decree or order passed therein. I empower my Advocate to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents and draw any money that might be payable to me in the said suit or matter.

The address for service of the said Advocate is No. 149, Commercial Street. C. & M. Station, Bangalore.

V. Ramalingam
Appellant

Personally known to me and signed in my presence.

Accepted.

ADVOCATE,
Bangalore

Municipal Councillor,
Bangalore City
and
Advocate, Bangalore.

Dated, 30-9-1939

~~In the Court of~~ Before the Hon'ble the Resident in Mysore at Bangalore.

~~Suit~~ No. of 1939, ~~193~~.

M. V. Ramalingam
2 Lalbagh Road
Bangalore.

~~Plaintiff~~/Appellant

~~Petitioner/Complainant~~

Vs

~~Defendant~~/Respondent

~~Counter-Petitioner/Accused~~

MEMO.

VAKALATANAMA.

Filed on 30 September 1939.

For the Appellant.

O. S. N. SHERIFF, M.A., (Litt) LL.B.,
Municipal Councillor, Bangalore City,
and
Advocate Bangalore.

BEFORE THE HON'BLE THE RESIDENT

IN MYSORE, AT BANGALORE.

Mis. Appeal Petition No. of 1939.

V. Ramalingam,
'Vijayam'
Lalbagh Road,
Bangalore. *Appellant.*

Filed on:- 30-9-39.

O.S.N.Sheriff Esq.,
M.A.,(Litt) L.L.B.,
Advocate for the Appellant.
49, Commercial Street
Cross, Bangalore

Sir 2

R.Dis.No.F. 236(2)/-39 Judl. Dated 8 Novr. 1939.

Issue 3/11
Issued. 9/11/39

To

Mr.V.Ramalingam, "Vijayam"
Lalbagh Road, Bangalore.

P.U.C
S.N.I.

Reference your appeal dated the 30th September 1939.

The Hon'ble the Resident does not propose to interfere with the order passed by the Assistant to the Resident on his behalf. You may make an application under sub-section (8) of section 83-A of the Bangalore Municipal Law, 1897, if you so desire.

sd/- H. Trevelyan,
Secretary to the Resident.

Not to appear in original

Copy to the President, Municipal Commission, Civil and Military Station, Bangalore, with his office files returned.

Enclosure sent along with letter
9/11/39

A.S.Rao
2.XI.39